IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDNARY ORIGINAL CIVIL JURISIDICTION

CHAMBER SUMMONS NO.1278 OF 2003
IN
SUIT NO.3175 OF 1994

Gannon Dunkerley & Co.Ltd. .. Plaintiffs

Vs.

New Purnima Premises Co-op. Hsg.Soc.Ltd. & Anr. ..Defendants

Mr.H.J.Thakkar, Sr.Counsel i/b M/s.M.Jani & Co.for the plaintiffs

Mr.N.N.Bhadrashete for the defendant no.1

CORAM: S.U. KAMDAR, J.

DATE : 7TH MARCH, 2005.

P.C. :

1. The present Chamber Summons is taken out for condonation of delay in filing the written statement. The delay is about 9 years. The application for condonation of delay has been resisted by the plaintiffs interalia on the ground that there is no proper explanation furnished in support of the application in affidavit explaining in detail the delay in filing the written statement. Secondly, by an order

dated 17.8.99, the learned single Judge of this court has by way of last opportunity had directed written statement to be filed on or before 18.9.99 when the matter was taken up by the learned single judge under the caption of Undefended Suit for ex-parte decree.

2. It has been further contended that inspite of the said order dated 17.8.99 the written statement was not filed and the written statement is now sought to be tendered after a substantial period of delay. In my opinion the application ought to be granted. Firstly, merely because of the delay a substantial right of the parties ought not to be effected and he should be given an opportunity to defend the case on merits. Secondly, suit is still pending and is not yet disposed of. The direction to file written statement of 18.9.99 passed by the learned single Judge previously can be modified by condonation of delay and an opportunity can be granted to file the written statement. In my opinion the delay can be condoned by passing the order of granting cost to the plaintiff as the same is not likely to cause any substantial prejudice and by virtue of permitting the defendant to file written statement as the suit is not yet come up for trial. The Apex

Court has in the recent Judgement in the case of Divisional Manager, Plantation Division, Andaman & Nicobar Islands Vs. Munnu Barrick and Others reported in (2005) 2 Supreme Court Cases 237 held that in so far as condonation of delay is concerned the court must adopt a liberal approach and ought to grant the same as and when the same can be adequately compensated in term of cost. The Apex court has held as under:

> "In a case of this nature where serious questions of law were raised by the appellant, in our opinion, the Division Bench of the High Court should have taken a liberal view on the application for condonation of delay field by the appellant wherefor the respondent workmen could have been adequately compensated on monetary terms."

3. In the aforesaid circumstances, I grant the condonation of delay. However, the same will be on the payment of cost quantified at Rs.10,000/-. Office is directed to accept the written statement of the defendant if filed within a period of 7 days

from today and on making payment of cost by defendant to the plaintiff herein chamber summons disposed of accordingly.